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Attorneys for Complainant

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. AC-2009-21

11
12 **DANNY WISE**

DEFAULT DECISION AND ORDER

13
14
15 Respondent.

[Gov. Code, §11520]

16
17 **FINDINGS OF FACT**

18 1. On or about June 17, 2009, Complainant Patti Bowers, in her official capacity as the
19 Executive Officer of the California Board of Accountancy, Department of Consumer Affairs,
20 filed Accusation No. AC-2009-21 against Danny Wise ("Respondent") before the California
21 Board of Accountancy.

22 2. On or about March 18, 1983, the California Board of Accountancy ("Board") issued
23 Certified Public Accountant Certificate No. CPA 37249 to Respondent. The Certified Public
24 Accountant Certificate will expire on August 31, 2010, unless renewed.

25 3. On or about June 26, 2009, Carolina Lopez-Castillo, an employee of the Department
26 of Justice, served by Certified and First Class Mail a copy of the Accusation No. AC-2009-21,
27 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
28

1 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
2 was and is:

3 **8700 E. Vista Bonita #204**

4 **Scottsdale, AZ 85255.**

5 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c).

8 5. On or about July 15, 2009, the aforementioned documents, delivered by certified
9 mail, were returned by the U.S. Postal Service marked "Unclaimed."

10 6. On or about July 17, 2009, the aforementioned documents, delivered by first-class
11 mail, were returned by the U.S. Postal Service marked "Attempted – Not Known."

12 7. Government Code section 11506 states, in pertinent part:

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
14 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
15 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
16 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

17 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 AC-2009-21.

20 9. California Government Code section 11520 states, in pertinent part:

21 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
22 agency may take action based upon the respondent's express admissions or upon other evidence
23 and affidavits may be used as evidence without any notice to respondent.

24 10. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 evidence on file herein, finds that the allegations in Accusation No. AC-2009-21 are true.

27 11. The total cost for investigation and enforcement in connection with the Accusation
28 are \$7,715.47 as of August 11, 2009.

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1 e. On or about July 29, 2008, the Enforcement Division of the Board mailed Respondent
2 a request for information and documentation regarding this matter, more fully set forth above. On
3 or about September 19, 2008, a Board investigator mailed Respondent an additional request for
4 information and documentation regarding this matter. Respondent did not reply to these requests.

5 **(Breach of Fiduciary Responsibility)**

6 6. Respondent is subject to disciplinary action under section 5100, subdivision (i), on
7 the grounds of unprofessional conduct, in that Respondent knowingly breached his fiduciary
8 responsibility, by misappropriating \$65,000 from client E.H., as more fully discussed in
9 paragraph 5, above.

10 **(Embezzlement, Theft, Misappropriation of Funds, or Property)**

11 7. Respondent is subject to disciplinary action under section 5100, subdivision (k), on
12 the grounds of unprofessional conduct, in that Respondent embezzled, stole, and/or
13 misappropriated funds or property from client E.H., as more fully discussed in paragraph 5,
14 above.

15 **(Failure to Respond to Board Inquiry)**

16 8. Respondent is subject to disciplinary action under section 5100, subdivision (g), in
17 conjunction with California Code of Regulations, title 16, section 52, subdivision (a), on the
18 grounds of unprofessional conduct, in that Respondent failed to respond to the Board's inquiry
19 regarding the transfer of \$65,000 from client E.H., as more fully discussed in paragraph 5, above.

20 **(Fraud, Dishonesty)**

21 9. Respondent is subject to disciplinary action under section 5100, subdivision (c), on
22 the grounds of unprofessional conduct, in that Respondent committed fraudulent and dishonest
23 acts in the practice of public accountancy. The circumstances are as follows:

24 a. Respondent was engaged by client Dr. and Mrs. C.F. (hereinafter, "client C.F.") as
25 their accountant for more than twenty two (22) years, and for several years prior to 2004,
26 Respondent agreed to and actually paid the estimated taxes for client C.F.

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1 b. Client C.F. used Respondent for preparation of their 2004-2007 tax returns.
2 Respondent received money from client C.F. to be paid quarterly to the Internal Revenue Service
3 ("IRS") and the California Franchise Tax Board ("FTB"), for client C.F.'s annual income tax
4 liabilities.

5 c. In recent years, Respondent requested that client C.F. send the estimated tax
6 payments payable to the Respondent personally. Respondent promised to make the estimated tax
7 payments on client C.F.'s behalf. In or about July 2008, client C.F. grew suspicious that
8 Respondent had requested large sums to be deposited into his account for the purported payment
9 of estimated taxes. Respondent's latest request from client C.F. had been for \$90,000.

10 d. Respondent was late or failed to make total payments to the IRS and FTB on behalf
11 of client C.F., which resulted in IRS penalties and interest against client C.F.

12 e. Respondent failed to properly inform client C.F. of the status of their tax returns for
13 years 2004, 2005, 2006, and 2007.

14 f. For tax year 2006, Respondent failed to make payments of at least \$10,372.72 to the
15 IRS. Client C.F. suffered at least \$4,832.29 in penalties and interest.

16 g. For tax year 2007, Respondent received \$75,000 from client C.F. for estimated tax
17 payments. Respondent failed to remit any of the \$75,000 on behalf of client C.F.

18 h. On or about September 11, 2008, the Enforcement Division of the Board mailed
19 Respondent a request for information and documentation regarding this matter, more fully set
20 forth above. Respondent did not reply to this request.

21 **(Breach of Fiduciary Responsibility)**

22 10. Respondent is subject to disciplinary action under section 5100, subdivision (i), on
23 the grounds of unprofessional conduct, in that Respondent knowingly committed fiscal
24 dishonesty, and/or breached his fiduciary responsibility, by submitting false information
25 regarding the payment of estimated taxes, and misappropriating at least \$90,000 from client C.F.,
26 as more fully discussed in paragraph 9, above.

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1 **(Knowingly Prepared False, Fraudulent, or Misleading Information)**

2 11. Respondent is subject to disciplinary action under section 5100, subdivision (j), on
3 the grounds of unprofessional conduct, in that Respondent knowingly prepared false, fraudulent,
4 or misleading information. Specifically, Respondent prepared client C.F.'s 2004-2007 federal tax
5 returns, which included false information regarding the payment of estimated taxes, as more fully
6 discussed in paragraph 9, above.

7 **(Embezzlement, Theft, Misappropriation of Funds, or Property)**

8 12. Respondent is subject to disciplinary action under section 5100, subdivision (k), on
9 the grounds of unprofessional conduct, in that Respondent embezzled, stole, and/or
10 misappropriated funds or property from client C.F., as more fully discussed in paragraph 9,
11 above.

12 **(Failure to Respond to Board Inquiry)**

13 13. Respondent is subject to disciplinary action under section 5100, subdivision (g), in
14 conjunction with California Code of Regulations, title 16, section 52, subdivision (a), on the
15 grounds of unprofessional conduct, in that Respondent failed to respond to the Board's inquiry
16 regarding the this matter, as more fully discussed in paragraph 9, above.

17 **(Suspension or Revocation of the Right to Practice Before Government Body or Agency)**

18 14. Respondent is subject to disciplinary action under section 5100, subdivision (h), on
19 the grounds of unprofessional conduct, in that Respondent's right to practice before a
20 governmental agency was suspended. The circumstances are as follows:

21 a. On or about April 3, 2009, Respondent's right to practice before the Securities and
22 Exchange Commission, an agency of the government of the United States, was indefinitely
23 suspended pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. §
24 200.102(e)(2)].

25 **(Suspension or Revocation of the Right to Practice Before Government Body or Agency)**

26 15. Respondent is subject to disciplinary action under section 5100, subdivision (h), on
27 the grounds of unprofessional conduct, in that Respondent's right to practice before a
28 governmental agency was revoked. The circumstances are as follows:

b. On or about December 10, 2008, the Arizona State Board of Accountancy issued a Decision and Order, by consent, against Respondent, finding that Respondent committed ethical violations and failed to respond to client allegations regarding the misappropriation of client funds intended as payments to the Internal Revenue Service.

c. As a result of this Decision and Order, Respondent's Arizona license as a certified public accountant was revoked.

ORDER

IT IS SO ORDERED that Certified Public Accountant Certificate No. CPA 37249, heretofore issued to Respondent Danny Wise, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on October 1, 2009.

It is so ORDERED October 1, 2009

Robert A. Vale

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

60446977.DOC
DOJ Matter ID: LA2009602426

Exhibit A

Accusation No. AC-2009-21

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 ALVARO MEJIA
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8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against,

Case No. A-2009-21

12 **DANNY WISE**
13 **8700 E. Vista Bonita #204**
Scottsdale, AZ 85255
14 **Certified Public Accountant Certificate No.**
CPA 37249

ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

21 2. On or about March 18, 1983, the California Board of Accountancy issued Certified
22 Public Accountant Certificate Number CPA 37249 to Danny Wise (Respondent). The certificate
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 August 31, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the California Board of Accountancy (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 **COST RECOVERY**

2 6. Section 5107(a) of the Code states:

3 "The executive officer of the board may request the administrative law judge, as part of the
4 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
5 found to have committed a violation or violations of this chapter to pay to the board all reasonable
6 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
7 The board shall not recover costs incurred at the administrative hearing."

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Fraud, Dishonesty)**

10 7. Respondent is subject to disciplinary action under section 5100, subdivision (c), on
11 the grounds of unprofessional conduct, in that Respondent committed fraudulent and dishonest
12 acts in the practice of public accountancy. The circumstances are as follows:

13 a. Respondent was engaged by client Mr. E.H.¹ (hereinafter, "client E.H.") as his
14 accountant for more than twenty five (25) years. In or about May 2008, client E.H. contacted
15 Respondent to inquire about the best way to transfer \$65,000 from client E.H.'s pension fund to
16 an escrow account in Charlottesville, Virginia for a home purchase.

17 b. Respondent advised client E.H. to transfer the \$65,000 directly to Respondent's
18 account and that Respondent would then wire the money to the escrow company prior to escrow
19 closing in June 2008. Client E.H. directed his financial advisor to transfer \$65,000 to
20 Respondent's Whispering Winds Property LLC bank account at Compass Bank in Scottsdale,
21 Arizona. On or about May 27, 2008, the money was transferred to Respondent's account.

22 c. After the \$65,000 had been transferred to Respondent's account, client E.H. made
23 numerous attempts to verify that Respondent had in fact wired the money to the escrow account
24 in Virginia. Respondent never made the transfer. Client E.H. eventually made a separate
25 \$65,000 transfer from another account to Charlottesville Settlement Company in Virginia.

26 _____
27 ¹ Client names have been omitted for purpose of privacy. The names and contact
28 information for client(s) involved in this Accusation will be disclosed upon receipt of a proper
request for discovery.

1 d. On or about September 29, 2008, Client E.H. received a check for \$65,000 from
2 Respondent's Whispering Winds Property LLC. After being deposited, the check was returned
3 by Bank of America because Respondent's account was closed. Respondent has not returned any
4 money to client E.H.

5 e. On or about July 29, 2008, the Enforcement Division of the Board mailed
6 Respondent a request for information and documentation regarding this matter, more fully set
7 forth above. On or about September 19, 2008, a Board investigator mailed Respondent an
8 additional request for information and documentation regarding this matter. Respondent did not
9 reply to these requests.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Breach of Fiduciary Responsibility)**

12 8. Respondent is subject to disciplinary action under section 5100, subdivision (i), on
13 the grounds of unprofessional conduct, in that Respondent knowingly breached his fiduciary
14 responsibility, by misappropriating \$65,000 from client E.H., as more fully discussed in
15 paragraph 7, above, which is incorporated herein as set forth in whole.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Embezzlement, Theft, Misappropriation of Funds, or Property)**

18 9. Respondent is subject to disciplinary action under section 5100, subdivision (k), on
19 the grounds of unprofessional conduct, in that Respondent embezzled, stole, and/or
20 misappropriated funds or property from client E.H., as more fully discussed in paragraph 7,
21 above, which is incorporated herein as set forth in whole.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Failure to Respond to Board Inquiry)**

24 10. Respondent is subject to disciplinary action under section 5100, subdivision (g), in
25 conjunction with California Code of Regulations, title 16, section 52, subdivision (a), on the
26 grounds of unprofessional conduct, in that Respondent failed to respond to the Board's inquiry
27 regarding the transfer of \$65,000 from client E.H., as more fully discussed in paragraph 7, above,
28 which is incorporated herein as set forth in whole.

FIFTH CAUSE FOR DISCIPLINE

(Fraud, Dishonesty)

11. Respondent is subject to disciplinary action under section 5100, subdivision (c), on the grounds of unprofessional conduct, in that Respondent committed fraudulent and dishonest acts in the practice of public accountancy. The circumstances are as follows:

a. Respondent was engaged by client Dr. and Mrs. C.F. (hereinafter, "client C.F.") as their accountant for more than twenty two (22) years, and for several years prior to 2004, Respondent agreed to and actually paid the estimated taxes for client C.F.

b. Client C.F. used Respondent for preparation of their 2004-2007 tax returns. Respondent received money from client C.F. to be paid quarterly to the Internal Revenue Service (IRS) and the California Franchise Tax Board (FTB), for client C.F.'s annual income tax liabilities.

c. In recent years, Respondent requested that client C.F. send the estimated tax payments payable to the Respondent personally. Respondent promised to make the estimated tax payments on client C.F.'s behalf. In or about July 2008, client C.F. grew suspicious that Respondent had requested large sums be deposited into his account for the purported payment of estimated taxes. Respondent's latest request from client C.F. had been for \$90,000.

d. Respondent was late or failed to make total payments to the IRS and FTB on behalf of client C.F., which resulted in IRS penalties and interest against client C.F.

e. Respondent failed to properly inform client C.F. of the status of their tax returns for years, 2004, 2005, 2006, and 2007.

f. For tax year 2006, Respondent failed to make payment of at least \$10,372.72 to the IRS. Client C.F. suffered at least \$4,832.29 in penalties and interest.

g. For tax year 2007, Respondent received \$75,000 from client C.F. for estimated tax payments. Respondent failed to remit any of the \$75,000 on behalf of client C.F.

h. On or about September 11, 2008, the Enforcement Division of the Board mailed Respondent a request for information and documentation regarding this matter, more fully set forth above. Respondent did not reply to this request.

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1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Suspension or Revocation of the Right to Practice Before Government Body or Agency)**

3 16. Respondent is subject to disciplinary action under section 5100, subdivision (h), on
4 the grounds of unprofessional conduct, in that Respondent's right to practice before a
5 governmental agency was suspended. The circumstances are as follows:

6 a. On or about April 3, 2009, Respondent's right to practice before the Securities and
7 Exchange Commission, an agency of the government of the United States, was indefinitely
8 suspended pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. §
9 200.102(e)(2)].

10 **ELEVENTH CAUSE FOR DISCIPLINE**

11 **(Suspension or Revocation of the Right to Practice Before Government Body or Agency)**

12 17. Respondent is subject to disciplinary action under section 5100, subdivision (h), on
13 the grounds of unprofessional conduct, in that Respondent's right to practice before a
14 governmental agency was revoked. The circumstances are as follows:

15 a. On or about December 10, 2008, the Arizona State Board of Accountancy issued a
16 Decision and Order, by consent, against Respondent, finding that Respondent committed ethical
17 violations and failed to respond to client allegations regarding misappropriation of client funds
18 intended as payments to the Internal Revenue Service.

19 b. As a result of this Decision and Order, Respondent's Arizona license as a certified
20 public accountant was revoked.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

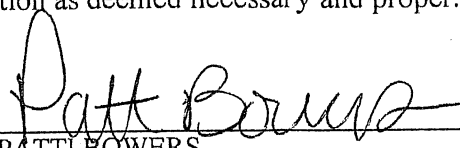
1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Number CPA 37249, issued to Danny Wise.

2. Ordering Danny Wise to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

3. Taking such other and further action as deemed necessary and proper.

DATED:

June 17, 2009


PATTI BOWERS

Executive Officer

California Board of Accountancy

Department of Consumer Affairs

State of California

Complainant

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